## REMARKS/ARGUMENTS

### I. STATUS OF THE PENDING CLAIMS

#### A. Amendments

Upon entry of this amendment, claims 1-8 and 10-29 are pending in the present application. Independent claims 1, 15 and 17 are amended to more particularly point out the subject matter of the claimed invention. Dependent claims 2, 3, 16, 17, 19, 22, 23 and 29 are amended to clarify these claims and to comport these claims with amendments made to their corresponding independent claims. New claims 30-32 are added and are supported by the original claims and by the specification and Abstract. Claim 9 is canceled without prejudice or disclaimer.

No new matter has been added by any amendment herein.

#### B. Rejections

Claims 1, 3-5, 9-15, 17-20, 22, 24, 28 and 29 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by JP 2003334149 ("JP1").

Claims 6, 23 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP in view of WO 2005/016085 ("the PCT Publication").

Claims 7, 8, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP1 in view of US 5,123,130 to Sanders ("Sanders").

Claims 2 and 16 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP1 in view of JP 2004016301 ("JP2").

Claim 21 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP1 in view of US 2003/0135186 to Olsen et al. ("Olsen").

Applicant submits that the rejections are improper and should be withdrawn.

## II. REJECTION UNDER 35 U.S.C. § 102(b) OVER JP 2003334149

Claims 1, 3-5, 9-15, 17-20, 22, 24 and 28-29 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by JP1.

A rejection of a claim as anticipated under 35 U.S.C. § 102(b) requires a showing that each and every claim limitation be identically disclosed in the applied reference. If even one claim limitation is not disclosed in the reference, the claim is patentable over the reference.

Applicant respectfully traverses the rejection of claims 1, 3-5, 9-15, 17-20, 22, 24 and 28-29 on the basis of the following arguments.

Independent claims 1, 15 and 17 have been amended to more particularly point out the plurality of layers comprising the mat. JP1 does not disclose a plurality of layers as recited by the amended claims. Accordingly, Applicant respectfully submits that independent claims 1, 15, and 17 and their dependent claims 3-5, 9-14, 16, 18-20, 22, 24, and 28-29, are not disclosed by JP1. Accordingly, the rejection under 35 U.S.C. §102(b) is improper and should be withdrawn.

## III. REJECTION UNDER 35 U.S.C. § 103(a) OVER JP 2003334149 AND WO 2005/016085

Dependent claims 6, 23 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over JP1 in view of the PCT Publication.

A rejection under 35 U.S.C. § 103(a) requires the establishment of a *prima facie* case that the claimed subject matter, including all claim elements, would have been obvious to a person having ordinary skill in the art on the basis of either a single prior art reference or more than one reference properly combined. No such *prima facie* case has been established for these claims. Applicant respectfully traverses these rejections, as set forth more fully below.

As discussed above, JP1 does not disclose the invention of the amended independent claims 1 and 17, from which claims 6, 23, and 25, depend. Applicant submits that the PCT publication does not remedy the deficiencies of JP1 to suggest claims 6, 23, and 25.

The PCT Publication does not disclose a plurality of layers as recited by the pending claims. At best, the PCT Publication discloses a maximum of two layers, the first layer consisting of either liquid permeable or impermeable material, and the second layer being either

more or less absorbent than the first. The PCT Publication is directed to various means of joining these different layers, but does not discuss or suggest further layers as disclosed by the pending claims. There is also no discussion of potential advantages provided by such layers.

Consequently, claims 6, 23, and 25 cannot be an obvious combination of JP1 and the PCT publication. Accordingly, the rejection of these claims is improper and should be withdrawn.

## IV. REJECTIONS UNDER 35 U.S.C. § 103(a) OVER JP 2003334149 AND U.S. PATENT NO. 5,123,130

Dependent claims 7, 8, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over JP1 in view of Sanders.

Applicant respectfully disagrees. As discussed above, Applicant submits that JP1 does not disclose independent claims 1 and 17, from which claims 6, 7, 26, and 27, depend.

Sanders does not remedy the deficiencies of JP1 to suggest the pending claims. Sanders discloses the use of a fiber optic cable to illuminate a mat for leading a child to a toilet (Figs). As illustrated in the Figures, Sander's training mat does not come close to a toilet but remains a distance apart. As the mat has a fiber optic cable and remains some distance away from the toilet, there is no motivation to combine the JP1 toilet mat, which is placed immediately next to a toilet, with Sander's training mat which is not intended for placement around the base of a toilet.

Sanders also does not disclose a plurality of absorbent, porous, and impermeable layers as recited by the pending claims.

Accordingly, Applicant submits that claims 7, 8, 26, and 27 cannot be suggested by JP1 and Sanders, whether alone or in combination. Consequently, the rejection of these claims under §103(a) is improper and should be withdrawn.

## V. REJECTIONS UNDER 35 U.S.C. § 103(a) OVER JP 2003334149 AND JP 2004016301

Dependent claims 2 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP1 in view of JP2. Claims 2 and 16 recite an adhesive collar for adhering the periphery of a cut-away region to the toilet for creating a seal and preventing the mat from slipping.

The Examiner has summarily dismissed Applicant's previous arguments as not persuasive, "in that the term 'adhesive' fails to define over the adhering function of elements 51 and 52." (Final Office Action, p. 4).

However, Applicant respectfully disagrees. As discussed above, Applicant has demonstrated that JP1 does not disclose independent claims 1 and 15, from which claims 2 and 16 depend. JP2 does not remedy the deficiencies of JP1 to suggest the pending claims.

Items 51 and 52 of the figure in JP2 are not described. If anything, these elements appear to be attaching structures such as clips or Velcro®, and appears to provide an attachment point at a peripheral end. The covering cloth 3 appears to be draped and manually placed over the bottom edge of the toilet. The available Abstract of JP2 nowhere discloses an adhesive which is spread over the collar of the toilet mat, nor does JP2 disclose the formation of a seal.

In contrast to JP2, Applicant's adhesive is a sticky or gummy substance which is applied to the collar of the mat. An example is a suitable adhesive is 3M Post-It adhesive which allows the collar to be removably applied to the base of the toilet to provide a seal. Advantageously, the adhesive on the collar prevents the mat from slipping on the floor after installation.

These features of claims 2 and 16 are not suggested by JP1 or JP2, whether alone or in combination. Therefore, the rejection of these claims under §103(a) is improper and should be withdrawn.

## VI. REJECTIONS UNDER 35 U.S.C. § 103(a) OVER JP 2003334149 AND U.S. PATENT PUBLICATION NO. 2003/0135186

Claim 21 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over JP1 in view of Olsen. The Examiner alleges that the an olfactory indicator as recited in claim 21 is disclosed by Olsen. Applicant disagrees and maintains that the rejection of claim 21 in view of the combination of Olsen with JP1 is improper.

As discussed above, Applicant has submitted that JP1 does not disclose independent claim 17, from which claim 21 depends. Applicant further submits that there is no motivation to combine Olsen with JP1.

Applicant's invention is directed to a toilet mat, whereas Olsen is directed to wearable articles such as diapers. The field of toilet mats is not analogous to the field of diapers. One of ordinary skill would not refer to diapers when developing new toilet mats.

There is also no motivation to combine Olsen with JP1. There is no disclosure or suggestion in Olsen that the features of the disclosed diapers could be successfully used in toilet mats. There is also no suggestion in JP1 to seek ideas from diapers for further enhancement of toilet mats.

Applicant submits that the Examiner is engaging in impermissible hindsight in arriving at the pending claims, and is using Applicant's disclosure as a guide to pick and choose among cited references to arrive at Applicant's claims. Such hindsight selection is not an appropriate basis for an obviousness rejection, and the Examiner's reasoning that both references disclose "absorbent articles used for bodily waste having an odor" is indicative of such hindsight reasoning which is explicitly prohibited.

For these reasons, the rejection of claim 21 in view of JP1 and Olsen is improper and should be withdrawn.

## VII. CONCLUSION

Claims 1-8 and 10-32 of the Application, for the reasons set forth above, are now submitted to be patentably distinguished over the art of record. The Commissioner is authorized to charge any required fees to Deposit Account No. 23-1703.

Dated: March 21, 2007

Respectfully submitted,

for Andrew Fessak (48,528)
Scott T. Weingaertner
Reg. No. 37,756
Attorney for Applicant

Customer No. 007470
White & Case LLP
Direct Dial: (212) 819-8404